United Nations A/HRC/35/37/Add.2

General Assembly

Distr.: General
21 July 2017

Original: English

Human Rights Council
Thirty-fifth session
6-23 June 2017
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on trafficking in persons, especially women and children on her mission to the United States of America*

Note by the Secretariat

The Special Rapporteur on trafficking in persons, especially women and children, visited the United States of America from 6 to 16 December 2016, at the invitation of the Government. In the report, she highlights the country's strong and long-standing commitment to combating trafficking in persons, as evidenced by its periodically revised anti-trafficking legal framework and policies for the protection of victims, its multidisciplinary approach, awareness-raising efforts and the support provided to civil society organizations to enable them to offer assistance and protection to victims of trafficking. She also notes the State's regional and international engagement in efforts to combat trafficking.

The Special Rapporteur nonetheless expresses concern about, inter alia, the State's limited identification of cases of trafficking for the purpose of labour exploitation and forms of trafficking other than for sexual exploitation. Moreover, the current approach to migration policies and management, including the detention of irregular migrants, the temporary placement and return of unaccompanied migrant children and the temporary, non-immigrant visas tying migrants to single employers create vulnerability to human trafficking, including re-trafficking. The absence of vacatur and "safe harbour" laws in some states, as well as the criminalization of prostitution, also contribute to vulnerability to human trafficking. Economic inequalities and social exclusion, discrimination and insufficient labour protection create a favourable environment for traffickers in the country. She also notes challenges related to coordination among federal, state and local authorities to counter trafficking and the dearth of data on trafficking, which inhibits the understanding of the extent and prevalence of trafficking in the country.

On that basis, the Special Rapporteur makes a number of recommendations to the Government aimed at addressing remaining gaps in prevention, prosecution and victim protection, including the need to tackle the root causes of trafficking, such as poverty and

* The Special Rapporteur's report was submitted after the deadline in order to reflect the most recent developments.

GE.17-12397(E)

Please recycle

economic inequalities, gender-based discrimination and discrimination against minorities, inadequate labour protection and restrictive immigration policies. Further recommendations include ensuring that immigrants holding temporary visas are free to change employment; banning the detention of children; and providing individualized services for victims and ensuring that they have access to remedies and employment while awaiting decisions on immigration relief. She also recommends improving the identification of cases of trafficking for the purpose of labour exploitation; ensuring the implementation of the non-punishment principle for offences committed by trafficking victims as a direct result of their status; decriminalizing prostitution or at least not arresting, prosecuting or detaining people engaging in prostitution, as some cases of exploitation of prostitution could amount to trafficking; developing a comprehensive and systematic data collection system; and supporting efforts of businesses to prevent and combat trafficking, especially in their supply chains.

Report of the Special Rapporteur on trafficking in persons, especially women and children on her mission to the United States of America**

Contents

		Page
I.	Introduction	4
II.	Main findings	4
	A. Forms and manifestations of trafficking in persons	4
	B. Post-visit information about the criminalization of irregular migration and the impact on trafficked persons	7
	C. Legislative, policy and institutional framework	7
	D. Identification of trafficked persons	10
	E. Protection	11
	F. Investigation, prosecution and punishment	12
	G. Redress	14
	H. Repatriation and reintegration	16
	I. Prevention	16
	J. Cooperation and partnerships	18
III.	Conclusions and recommendations	19
	A. Conclusions	19
	B. Recommendations	19

** Circulated in language of submission only.

I. Introduction

1. The Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, visited the United States of America from 6 to 16 December 2016, at the invitation of the Government. The objectives of the visit, which included meetings in Washington, D.C., New York, San Francisco and Houston, were to examine the prevalent forms of trafficking in persons and assess the effectiveness of measures taken by the Government to combat trafficking and protect the human rights of trafficked persons.

2. During her visit, the Special Rapporteur met with representatives from the Department of Agriculture, Department of Defense, Department of Homeland Security, Department of the Interior, Department of Justice, Department of Labor, Department of State and the United States Agency for International Development. In San Francisco, she met with the Mayor's Task Force on Anti-Human Trafficking and in Houston she met with the Special Advisor to the Mayor on Human Trafficking and the City Attorney. She also met with members of the United States Congress in Washington, D.C., with members of the Superior Court of the District of Columbia and with members of the Immigration Court, the human trafficking intervention court and the Commission on Human Rights in New York. She also visited a children's facility managed by the Office of Refugee Resettlement and a detention facility operated by the Immigration and Customs Enforcement agency in Houston.

3. Moreover, she exchanged views with representatives from the Office of the United Nations High Commissioner for Refugees, the Organization of American States and members of the diplomatic community. She also met representatives from the business sector in Washington, D.C. and San Francisco as well as civil society organizations in the four cities visited.

4. The Special Rapporteur expresses her gratitude to the Government for its invitation and cooperation, to civil society organizations for their input and assistance and to the United Nations Information Centre and the Food and Agriculture Organization of the United Nations for their support prior to and during the visit. She is grateful to the resilient survivors who courageously shared their experiences in the hope of preventing future trafficking.

II. Main findings

A. Forms and manifestations of trafficking in persons

5. The United States faces challenges as a destination, transit and source country for trafficked men, women and children, including lesbian, gay, bisexual, transgender and intersex individuals, migrant workers and unaccompanied migrant children, runaway youth, American Indian and Alaska Natives and persons with disabilities. In some places, African American women and girls are disproportionately affected by trafficking in persons.[1] Both nationals of the United States and migrants, mainly from Central America and South-East Asia, are trafficked within and into the United States. China, Guatemala, Honduras, Mexico and the Philippines are the most common countries of origin for trafficking victims.[2] According to national hotline data from 2016, the states of California, Texas, Florida, Ohio and New York had the highest number of trafficking cases.[3] The close proximity to international borders and large immigrant populations are some of the factors that make these regions more vulnerable to trafficking in persons.

[1] *Mayor's Task Force on Anti-Human Trafficking*, "Human trafficking in San Francisco report 2016", p. 41.

[2] Polaris, "2016 Statistics from the National Human Trafficking Hotline and BeFree textline".

[3] Ibid.

6. The economic prosperity of the United States promotes mobility within the country and draws migrants in search of better livelihoods. However, economic inequality and social exclusion, discrimination, organized crime, including drug trafficking, and insufficient labour protections create vulnerability to human trafficking.

7. While many workers have found employment that matches their qualifications and aspirations, some have been compelled to work in precarious or informal employment, on short-term or part-time contracts or on temporary visas if they are migrants, rendering them vulnerable to human trafficking. Traffickers' modus operandi typically involves deceptive and fraudulent practices by some recruitment agents and employers relating to the nature and type of the employment offered. Many workers find themselves in a situation akin to debt bondage, trying to repay exorbitant debts owed to traffickers for their journey once promises of well-paying employment have turned into exploitative situations. The retention of passports and wages, as well as threats of deportation, are common forms of controlling migrant workers in certain sectors.

1. Trafficking for the purpose of sexual exploitation

8. From 2007 to 2016, 31,659 potential sex trafficking cases were identified in the United States through the national hotline/textline.[4] In 2016, 73 per cent of reported cases of human trafficking concerned sex trafficking.[5]

9. Adults, predominantly women, and children are compelled to engage in prostitution or sex work by family members, individuals with whom they are romantically involved, gangs or others who have forced them into prostitution or sex work or lured them with the false promise of a job, including via online advertisements. Persons trafficked for the purpose of sexual exploitation may be either United States citizens or foreign nationals. Sex trafficking often occurs in fake massage parlours, escort service agencies, brothels, private homes, on the street or at hotels or motels.

10. There are also reports that Native Americans are disproportionately at risk of being trafficked, especially for the purpose of sexual exploitation.[6] The influx of young, unaccompanied men working in high-paying oil jobs, for example in the Bakken Shale region (North Dakota), coincides with the increased trafficking of Native American women and children, notably by women from the reservations.[7]

2. Trafficking for the purpose of labour exploitation

11. Victims of trafficking for the purpose of forced labour and labour exploitation make up 14 per cent of trafficking cases reported via the national hotline/textline.[8] The victims are mainly from Jamaica, Mexico, Peru, the Philippines and South Africa, held temporary, non-immigrant visas (mostly A-3, B-1, G-5, H-2A, H-2B, J-1 and H-1B) and were employed in agriculture, landscaping, hospitality, restaurants and domestic work, among others.[9] Labour exploitation is, at times, accompanied by sexual abuse.

12. First-hand information was also received about victims exploited through precarious or informal employment, subjected to the reduction or non-payment of salaries, made to work long hours and given no rest days. Some recruitment agencies take advantage of the vulnerable situation of migrant workers to offer low wages and benefits and to charge future employees a recruitment fee, which can include migration or settlement expenses. As a result, migrant workers may find themselves in an inextricable situation where reporting

---

[4] Ibid.

[5] Ibid.

[6] See www.womenspirit.net/sex-trafficking/.

[7] See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21274&LangID=E#sthash.bPFqRtMI.dpuf.

[8] Polaris, "Hotline statistics".

[9] Labour trafficking cases in the United States reported to the National Human Trafficking Hotline and Befree Textline from 1 August 2014 to 31 July 2015; Polaris, "Labor trafficking in the U.S.: a closer look at temporary work visas".

violations of their rights, or returning voluntarily to their home country, is impossible due to the debts they have incurred.

13. Most temporary work visas tie a migrant worker to a single employer. As a result, if a worker leaves his or her job, he or she loses his or her legal status to work in the country and becomes at risk of deportation. This situation can be exploited by traffickers as a means of controlling their victims. In fact, 40 per cent of labour trafficking cases reported via the national hotline/textline are linked to temporary visas.[10]

3. Trafficking for the purpose of domestic servitude

14. The United States hosts about two million domestic workers.[11] An estimated 95 per cent of domestic workers are women and 46 per cent are foreigners.[12] As their work is performed in private households, including those of diplomats and international civil servants, where oversight is — by nature — limited, domestic workers are vulnerable to trafficking for the purpose of domestic servitude.

15. The majority of the 16 potential victims identified by one non-governmental organization (NGO) between 1 August, 2014 and 31 July, 2015 were located in the north-eastern United States; they were all female and 25 per cent of them were Filipina.[13] One survivor described how she had been brought to the United States by international civil servants — with the promise that she could attend school while helping them — but found herself working long hours without a wage; her passport was confiscated and her interactions with the outside world were monitored. She was finally rescued after a neighbour signalled her presence to the police.

16. Many victims of trafficking for the purpose of domestic servitude are recruited through family or community ties. Employment agencies, in source countries and the United States, also play a role in the trafficking of domestic workers. Victims face abuse and exploitation that further contributes to the trafficking situation, including breaches of contract, non-payment of salaries and deductions of recruitment and permit fees from their already meagre wages. Many domestic workers also experience physical and mental abuse at the hands of their employers and their families, as well as threats of deportation.

17. If domestic workers with A-3, G-5 or NATO-7 visas, which tie their immigration status to a single employer, leave an abusive situation, they become undocumented and risk deportation. Furthermore, traffickers frequently use victims' unfamiliarity with United States laws to make them believe there is danger in reporting their trafficking situation to law enforcement officers or seeking help.

4. Other forms of trafficking

18. There are also cases of trafficking involving unaccompanied migrant children who, after being processed by the agencies of the Department of Homeland Security and the Department of Health and Human Services, have been placed with family members in the United States. Some of these children have been trafficked for the purpose of sexual and labour exploitation by members of criminal networks who posed as family members or forced them into begging or drug smuggling.

19. A potential case of trafficking for the purpose of organ removal was also brought to the attention of the Special Rapporteur. The victim had been brought into the United States after marrying a man who was living in the country; she escaped from a moving car that was taking her to a hospital where she was due to have her kidney involuntarily removed.

---

[10] Cases reported from 1 August 2014 to 31 July 2015; Polaris, "Labor trafficking".

[11] Heidi Shierholz, "Low wages and scant benefits leave many in-home workers unable to make ends meet", Economic Policy Institute Briefing Paper No. 369, 25 November 2013, pp. 4 and 23.

[12] Linda Burnham and Nik Theodore, *Home Economics: The Invisible and Unregulated World of Domestic Work* (National Domestic Workers Alliance, 2012).

[13] Polaris, "Labor trafficking".

20. Cases of trafficking in persons with disabilities for the purpose of sexual exploitation, forced labour and others also exist. In such cases, traffickers — who may also be family members — steal their victims' social security and disability benefits.[14]

B. Post-visit information about the criminalization of irregular migration and the impact on trafficked persons[15]

21. Post-visit legal reforms related to immigration may affect the human rights of trafficked persons. These measures include the Executive Order on border security and immigration enforcement improvements, signed by President Donald Trump on 25 January 2017, which confirms the detention of individuals apprehended on suspicion of violating immigration law pending the decision of their removal or immigration relief. The Special Rapporteur cautions that the routine detention of migrants, including possible victims of human trafficking who have been classified as smuggled and processed for removal in the absence of accurate identification of trafficking grounds, may amount to "penaliz[ing victims] solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation or working without documentation".[16]

22. Another source of concern is the Executive Order on protecting the nation from foreign terrorist entry into the United States. By limiting the refugee resettlement programme, the Order places women and men at risk of human trafficking. In this context, the Special Rapporteur will pay close attention to the enforcement of the Executive Order on enforcing federal law with respect to transnational criminal organizations and preventing international trafficking, signed on 9 February 2017, which includes specific provisions related to trafficking in persons, in order to ensure that its implementation does not adversely affect trafficking victims.

C. Legislative, policy and institutional framework

1. Legislative framework

(a) International and regional legal framework

23. The United States is party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and to a number of international human rights instruments, including the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict. It has also ratified the Abolition of Forced Labour Convention, 1957 (No. 105) and the Worst Forms of Child Labour Convention, 1999 (No. 182) of the International Labour Organization.

24. Regrettably, the country is not party to several human rights conventions pertinent to the fight against human trafficking, although it had pledged, during its universal periodic review in 2015, to ratify a number of them, including the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention relating to the Status of Refugees and numerous International Labour Organization conventions remain to be ratified.

25. The United States is a signatory to the American Convention on Human Rights, but is yet to ratify the Inter-American Convention on International Traffic in Minors.

---

[14] The Human Trafficking Pro Bono Legal Center, "Trafficking of persons with disabilities" (April 2016).

[15] For reasons related to the internal deadline for this report, information on post-visit developments was only gathered until 15 March, 2017.

[16] Trafficking Victims Protection Act (2000), section 102 (19).

(b) Domestic legal framework

26. At the federal level, slavery and involuntary servitude are prohibited under the Thirteenth Amendment to the Constitution.

27. Under the Act of 2000, severe forms of trafficking in persons include situations "in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age" or "the recruitment, harbouring, transportation, provision, or obtaining of a person for labour or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery". Trafficking in persons for the purpose of forced labour carries a maximum penalty of a 20 years' imprisonment and a fine for "whoever knowingly recruits, harbours, transports, provides, or obtains by any means, any person for the purpose of severe forms of trafficking in persons". Trafficking for the purpose of sexual exploitation carries a mandatory sentence of 10 to 15 years imprisonment and/or a fine or life imprisonment (if the victim is a child under 14).[17] The Act also provides for a long-term form of immigration relief for trafficked persons who cooperate with law enforcement services, — known as the T-visa (see section G below). The 2008 revision of the Victims of Trafficking and Violence Protection Act authorizes foreign victims to apply for a T-visa if they are, inter alia, "unable to participate in a law enforcement interview due to physical or psychological trauma" or are under 18 years of age. The 2013 revision of the Act calls on the Department of State to provide information to the Department of Labor relating to its List of Goods Produced by Child Labor or Forced Labor. It also establishes measures to prevent child marriage. The fact that, since 2000, the Act has been revised several times to include additional provisions for the protection of victims indicates the Government's commitment to tackling emerging forms of trafficking in persons and adopting a victim-centred approach.

28. The Preventing Sex Trafficking and Strengthening Families Act of 2014 and the Justice for Victims of Trafficking Act of 2015, which enable survivors to provide formal input into federal anti-trafficking policies, complete the anti-trafficking legal framework.

29. In addition, chapter 77 of Title 18 of the United States Code on peonage, slavery and trafficking in persons can be invoked to prosecute trafficking or trafficking-related offences. In the United States, local and state governments have traditionally been responsible for crime control. Therefore, while the Victims of Trafficking and Violence Protection Act was enacted at the federal level, this did not preclude states from additionally exercising their jurisdiction and criminalizing human trafficking under state criminal legislation. In fact, virtually all 50 states have criminalized human trafficking.

30. Federal law provides labour protections under the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act. Federal criminal law may provide additional labour-related protection, for instance when the destruction or confiscation of passports or other immigration documents relates to trafficking in persons. Furthermore, the Tariff Act of 1930 bans the import of products made using forced labour. The Trade Facilitation and Trade Enforcement Act of 2015 repealed the "consumptive demand" exception that had allowed the import of certain goods produced using forced labour if those goods were not produced in such quantities in the United States as to meet the consumptive demands of the United States.

31. Nevertheless, the Special Rapporteur is concerned that, under Title 29, sections 1802 (8) (B) (ii) and (10) (B) (iii) of the United States Code, migrant workers holding an H-2A visa for temporary or seasonal agricultural work are excluded from labour protections provided under the Migrant and Seasonal Agricultural Worker Protection Act. Furthermore, she is concerned that the National Labor Relations Act does not apply to public sector employees at the federal and state levels, agricultural workers or domestic workers, an issue that has also been raised by the Working Group on the issue of human rights and transnational corporations and other business enterprises, despite analogous protections for employees in the federal workforce contained in the Federal Labor Relations Act of 1978.

[17] United States Code, Title 18, sections 1589 and 1591.

This, in effect, prevents workers from forming unions to demand improved labour conditions. The exclusion of lawfully present immigrants from the Medicaid programme for a five-year waiting period, with the exception of emergency care, also increases the vulnerability of migrant workers.[18] She nevertheless encourages states to pass statutes to accord agricultural workers associational and collective bargaining rights, as is the case in California.

32. Concerning the protection of domestic workers, the Department of State provides specific safeguards. The Special Rapporteur welcomes the obligation on personnel of foreign diplomatic missions and international organizations who employ a domestic worker to draw up a written contract that includes the minimum wage and working hours and prohibits deductions from wages for lodging, medical insurance, travel or meals.

33. There have also been encouraging developments regarding state laws to counter trafficking for the purpose of labour exploitation, such as the California Transparency in Supply Chains Act, which requires companies to report on their actions to eradicate slavery and human trafficking in their supply chains. However, implementation challenges include the inconsistent disclosure of information and lack of appropriate sanctions (see A/HRC/35/37).

2. Policy framework

34. The Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States 2013-2017 aims to strengthen coordination among and the capacity of governmental and non-governmental entities.[19]

35. In support of the Government's zero tolerance policy on trafficking in persons by federal contractors and subcontractors, the Federal Acquisition Regulation requires all government contracts to prohibit federal contractors and subcontractors from engaging in severe forms of trafficking in persons. In 2012, President Barack Obama's Executive Order on strengthening protections against trafficking in persons in federal contracts, prohibited, among others, contractors and subcontractors from using misleading or fraudulent recruitment practices, charging employees recruitment fees and confiscating or otherwise denying an employee access to his or her identity documents. In compliance therewith, the Department of Defense ensures that employees and contractors who facilitate or support trafficking in persons face consequences, even if such activities may be legal in the host country. The National Strategy for Child Exploitation, Prevention and Interdiction and the National Action Plan on Responsible Business Conduct, adopted in 2016, further strengthen the anti-trafficking policy framework.

36. However, further efforts to strengthen policy coherence between anti-trafficking and labour policies are necessary to tackle labour trafficking more effectively. In addition, the fact that the country's immigration policy is based on the criminalization of irregular migrants, who may include victims of trafficking, has an unintended impact on the prevalence of trafficking (see paras. 21-22).

3. Institutional framework

37. In order to coordinate anti-trafficking initiatives, a number of task forces have been put in place by various entities. At the federal level, the President's Interagency Task Force to Monitor and Combat Trafficking in Persons and the Senior Policy Operating Group coordinate the efforts of 15 federal departments and agencies to address human trafficking. The United States Advisory Council on Human Trafficking, composed of 11 leaders of trafficking survivors, also provides the federal Government with experience-based advice and recommendations.

39. She commends the efforts of authorities at the federal, state and local levels to adopt new legislation, refine internal regulations and set up task forces, all of which demonstrate a long-standing commitment to anti-trafficking efforts in the country. The interaction

[18] See www.healthcare.gov/immigrants/lawfully-present-immigrants/.

[19] See www.ovc.gov/pubs/FederalHumanTraffickingStrategicPlan.pdf.

between government authorities and the vibrant civil society organizations engaged in combating trafficking is praiseworthy. However, coordination between government bodies at the federal, state and local levels remains a challenge, partly owing to the differences in state and federal legislation, the varying level of commitment of the different agencies to the issue of trafficking, their understanding of trafficking and the potential redundancies and overlaps with respect to their actions.

D. Identification of trafficked persons

40. The Anti-Trafficking Coordination Team initiative (ACTeam), coordinated by the Human Trafficking Prosecution Unit at the Department of Justice, the Federal Bureau of Investigation, the Department of Labor and the Immigration and Customs Enforcement service of the Department of Homeland Security, the Bureau of Diplomatic Security of the Department of State and the Department of Health and Human Services are, among others, responsible for identifying trafficked persons.

41. Trafficked persons are also detected through a national human trafficking toll-free hotline, funded by the Department of Health and Human Services, that operates around the clock and is available in over 200 languages. Other useful hotlines include the service operated by the National Center for Missing & Exploited Children for reporting crimes against children, including child prostitution; the Wage and Hour Division of the Department of Labor and the hotline operated by the Office of the Inspector General for complaints on labour issues; and the hotline set up by the Department of Defence for identifying and reporting cases of suspected fraud, waste of funds and mismanagement, including trafficking, in the Department's programmes and operations. In addition, victims may be identified by civil society organizations, some of whom are funded by the Department of Justice and the Department of Health and Human Services.

1. Trafficking for the purpose of sexual exploitation

42. At the state level, individuals engaged in prostitution or sex work can be arrested on prostitution-related charges. This provides police with the ability to conduct raids, which may at times allow for the identification of victims of human trafficking. However, these prostitution-related arrests may have unintended negative consequences for potential victims of sex trafficking. Lack of confidence in law enforcement services, fear of arrest, prosecution or deportation are some of the obstacles that increase victims' insecurity and force them to work underground in dangerous environments, which in turn renders their identification as victims of trafficking more difficult. In this regard, the Special Rapporteur welcomes the stance taken by the Sex Work and Trafficking Policy Impact Committee of the San Francisco Mayor's Task Force on Anti-Human Trafficking. She believes that a human rights-based approach to trafficking, which necessarily includes the decriminalization of the sale of sexual commercial services, is necessary to allow individuals to report their situation without fear.

43. In addition to law enforcement officials, local community-based organizations, health services and child welfare and protection services assist in victim identification. The judiciary also has a role to play in identifying trafficked persons. In this regard, the Special Rapporteur welcomes the protocol issued by the Executive Office for Immigration Review of the Department of Justice on identifying trafficking victims appearing before immigration courts. She stresses the need for its implementation across the country.

2. Trafficking for the purpose of labour exploitation

44. Wage and Hour Division officials from the Department of Labor conduct labour inspections to administer and enforce federal labour laws. The Special Rapporteur was informed that the agriculture, construction and hospitality industries are predominantly vulnerable to labour trafficking. The Department of Defense also seeks to identify cases of human trafficking in its domestic and international operating environments, including its own supply chain.

45. However, victims may avoid reporting human rights abuses, as they fear loss of employment, deportation or physical violence by their exploiters, and thus remain unidentified. According to the Department of Agriculture, some victims — particularly migrant workers — opt not to report violations for fear of having their future visa applications denied. Migrant workers' rights may also be violated by multiple actors who are motivated by perverse incentives that often converge to the detriment of migrant workers, including private sector employers, recruitment agencies, union-busting firms, the Immigration and Customs Enforcement agency, local police forces and sheriffs' offices and private detention facilities.[20] Migrant workers, especially those working in remote areas and those in irregular migration situations, are also vulnerable and isolated as they face additional challenges in understanding domestic laws and connecting with local networks and services.

3. Trafficking for the purpose of domestic servitude

46. With regards to the identification of trafficked domestic workers, besides self-reporting or reporting by a third party, the annual requirement for migrant domestic workers employed by diplomatic mission and international organization personnel in Washington, D.C., to physically register, without the presence of their employer, is a good opportunity for authorities to inform workers of their rights and how to seek help, review their working conditions and identify possible trafficking situations.

4. Trafficking of children

47. All unaccompanied migrant children from non-contiguous countries are referred to the Office of Refugee Resettlement at the Department of Health and Human Services for temporary placement. In the case of minors from contiguous countries (Mexico and Canada), the authorities can allow a child to withdraw his or her application to enter the United States and return home, but only after the child has been screened to ensure they will not be returned to harm and have not been a victim of human trafficking. This screening is performed by the Customs and Border Protection agency, whose law enforcement approach may intimidate potential child victims. If victims are not correctly identified, they may be returned home and face a heightened risk of re-victimization.

48. Generally, there are concerns that the number of trafficked persons identified and provided with support is still low compared to the estimated scale of trafficking in the country. Moreover, the number of identified sex trafficking cases is disproportionate compared to the number of cases of trafficking for labour exploitation, because the former appear to be easier to detect. It is therefore essential to prioritize the identification of labour trafficking victims.

E. Protection

1. Services provided to victims

49. The federal Government provides funding to help government and non-governmental entities serving victims and trafficking survivors to manage cases and provide medical and dental care, mental health and substance abuse treatment, shelter, translation and interpretation services, immigration and legal assistance, employment and training, transportation assistance and other recovery services. In 2015, a 50 per cent increase in new beneficiaries, compared with the number of beneficiaries served by grantees in 2014, was noted by the Office for Victims of Crime of the Department of Justice, which administers funding to support trafficking victims.[21] The Special Rapporteur welcomes this increase, as well as the announcement in March 2016 by the Department of Justice that cooperation with law enforcement services would be an eligibility requirement

[20] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20317&LangID=E.

[21] National Association of Adult Survivors of Child Abuse, "Child abuse trauma: prevention, intervention & recovery" (2016).

that could be waived for accessing victim services funded by the Department of Justice.[22] The provision of assistance to trafficked persons should not depend on their participation in criminal proceedings.

50. The Special Rapporteur notes that additional resources are needed to provide victims with adequate legal counsel and representation in criminal proceedings. Moreover, she encourages the authorities to adopt a more human rights-centred approach to ensure further protection from harm and the provision of tailored assistance that meets victims' individual needs. Survivors who manage to escape from their traffickers face a heightened risk and vulnerability. Providing victims with effective protection helps to establish a relationship of confidence between law enforcement officials and survivors, who may be more inclined to assist in criminal proceedings.

51. She expresses serious concerns about the limited number of temporary shelters and long-term housing services for identified victims. The placement of unaccompanied children in shelters managed by the Office of Refugee Resettlement must occur within 72 hours of their apprehension. However, reports were brought to her attention of children kept in detention centres because of a lack of sufficient safe shelters in the country. The situation of male victims, for whom no shelters exist, is also a cause for concern, despite the provisions contained in the 2005 and 2008 revisions of the Victims of Trafficking and Violence Protection Act allowing for the creation of such facilities.

52. Finally, the expert commends the role of civil society organizations in providing protection and assistance to victims of trafficking. However, insufficient or irregular government funding remains a barrier to victim rehabilitation, particularly for those who are underserved, such as young, male and transgender trafficking victims.

2. Non-criminalization of trafficked persons

53. Trafficking victims require protection in connection with offences committed as a result of having been trafficked. Federal anti-trafficking law recognizes that minors under the age of 18 who engage in prostitution or sex work are likely to be victims of sex trafficking and are thus entitled to protection. However, states are not bound to comply with those provisions. This can result in inconsistencies between federal law and certain state laws on the age of majority, which is less than 18 in some States.[23] This inconsistency poses a challenge for the identification and protection of trafficked children who may not readily self-identify as victims, including because their trafficking may involve romantic or familial relationships. The criminalization of trafficked girls and boys and their detention together with juveniles who have committed crimes, instead of receiving the medical, legal and social assistance that their status as victims of a crime requires, is against the best interest of the child and can never be considered a means of protection.

54. The Special Rapporteur applauds states that have adopted *vacatur* laws, which allow victims to expunge their criminal conviction records for crimes committed as a result of their status as trafficked persons. She cautions that criminal records are indeed challenges that hinder survivors' ability to access services, including housing.

F. Investigation, prosecution and punishment

55. The investigation of human trafficking offences is conducted through a collaborative, multi-agency approach involving federal, state, local and tribal law enforcement services. The Department of Homeland Security, particularly through its Immigration and Customs Enforcement agency and Homeland Security Investigations, investigates cross-border crimes, including the trafficking of adults and children for the

[22] Ibid.

[23] See www.ncsl.org/research/civil-and-criminal-justice/juvenile-age-of-jurisdiction-and-transfer-to-adult-court-laws.aspx.

purpose of sexual and labour exploitation. In 2016, the Department of Homeland Security opened 1,025 trafficking cases and identified 435 victims of trafficking.[24]

56. The Department of Justice also investigates and prosecutes human trafficking crimes, through its Civil Rights Division, its Criminal Division, the United States attorneys' offices and the Federal Bureau of Investigation. More specifically, the Federal Bureau is responsible for investigating human trafficking and supporting the victims of this crime through its Civil Rights Unit, Violent Crimes Against Children program and Office for Victim Assistance. In 2016, joint investigative efforts by the Federal Bureau's human trafficking programmes resulted in the initiation of over 1,800 trafficking investigations and the arrests of nearly 2,600 individuals for sex and labour trafficking offences by federal, state and local law enforcement task force officers.[25] By comparison, in 2015, 802 human trafficking investigations were launched by the Department of Justice, in addition to the 1,011 investigations separately initiated by the Enhanced Collaborative Model human trafficking task forces. In 2015, 175 human trafficking-related cases were also opened worldwide by the Department of State, and at least 10 human trafficking-related cases involving United States military personnel were investigated by the Department of Defense.[26] Moreover, the Wage and Hour Division of the Department of Labor enforces federal labour laws and undertakes on-site investigations of industries where the potential for trafficking is high, while the Bureau of Diplomatic Security of the Department of State examines trafficking cases involving visa and passport fraud.

57. A number of factors hamper the effective and swift investigation of trafficking cases, including limited coordination among enforcement agencies at the federal, state and local levels and varying levels of resources, skills and commitment to handle cases of trafficking. Moreover, the disproportionate focus on the investigation of human trafficking cases for sexual exploitation, in comparison to labour exploitation, has been brought to the Special Rapporteur's attention.

58. In 2016, the Department of Justice initiated 241 human trafficking prosecutions, charging 531 individuals and convicting 439 defendants.[27] Out of the prosecutions initiated in 2015, only 2 per cent involved labour trafficking.[28] Penalties imposed on convicted traffickers range from five years in prison to life imprisonment.

59. The Special Rapporteur acknowledges the positive measures taken to prosecute cases of human trafficking. She notes with satisfaction the marked increase in prosecutions in Atlanta, El Paso, Kansas City, Los Angeles, Memphis and Miami since the launch of the Anti-Trafficking Coordination Team (ACTeam) initiative, which brings together federal agents and prosecutors to implement a joint strategic action plan focused on investigating and prosecuting trafficking for the purpose of sexual and labour exploitation. She also welcomes the role of specialized units in the district attorneys' offices comprised of trained and dedicated law enforcement staff to deal with the crime of trafficking in persons in the State of New York. She notes, however, that many victims first come into contact with police officers and justice officials who do not have the same level of training, and may thus treat victims as offenders. She encourages the authorities to ensure that law enforcement officials at all levels are trained on how to identify, engage with and support victims of human trafficking. The Department of Defense has also prosecuted trafficking cases involving members of the military and civilian employees in both its domestic and international operating environments, including in its own supply chain. The Special Rapporteur regrets that only one trafficking case has been brought to the attention of the authorities over the past eight years.

60. In addition, the recent establishment of the human trafficking intervention court in New York makes it possible to dismiss criminal cases brought on grounds of prostitution

[24] White House, Office of the Press Secretary, "Fact sheet: building a lasting effort to end modern slavery" (2016).
[25] Department of Justice, National Strategy to Combat Human Trafficking, 2017.
[26] Department of State, "Trafficking in persons report, 2016".
[27] White House, Office of the Press Secretary, "Fact sheet: building a lasting effort".
[28] Department of State, "Trafficking in persons report, 2016".

and clear the criminal records of the individuals concerned. Since the Human Trafficking Intervention Initiative was established in 2013, 9,000 cases have been examined by 11 human trafficking courts. However, cases can only be brought before these courts following the defendant's arrest for prostitution or sex work, rather than on the basis of a complaint or report.

61. There is also inconsistent application of the non-punishment principle, which states that trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.[29] In the absence of state safe harbour laws, children under the age of 18 can be prosecuted for criminal activities. Those who engage in prostitution or sex work, especially women, girls and lesbian, gay, bisexual, transgender and intersex persons, including potential victims of trafficking, are arrested and convicted for prostitution-related offences. She regrets that not all *vacatur* laws apply to adults or to other forms of trafficking, such as trafficking for the purpose of labour exploitation.

62. Other reasons for low prosecution rates include: uncertainty among some state and local law enforcement agencies regarding their jurisdiction over forced labour cases; the length of human trafficking trials; the limited legal assistance and information available on cases; diplomatic immunity for perpetrators; the inability of victims to work while in shelters; and victims' fear of reprisals if they report traffickers and their fear of deportation owing to a lack of awareness of existing remedies (see section G). All of these obstacles further discourage victims of trafficking from coming forward and collaborating with the authorities.

G. Redress

63. Compensation and restitution are an integral part of an effective remedy for victims of trafficking under international law and standards. In addition to any other civil or criminal penalties, under the Victims of Trafficking and Violence Protection Act, mandatory restitution entitles trafficking victims to receive compensation for personal loss and the economic value of their services, either from their traffickers or the Domestic Trafficking Victims' Fund.[30] Federal prosecutors are required to seek restitution on behalf of victims of trafficking. The Department of Labor also has the authority to recover up to triple the amount owed to trafficked persons in unpaid wages.

64. In practice, restitution is infrequently awarded in trafficking cases, especially in cases relating to sexual exploitation, because the victim has waived his or her right to obtain restitution or has not cooperated with law enforcement agencies, the defendants are insolvent or other factors. Out of 306 indictments issued in federal trafficking cases from 2009 to 2012, restitution was awarded in only 36 per cent of cases. In the cases that related to sex trafficking, restitution was requested in 61 per cent of indictments: 44 per cent of these requests were granted. Monetary restitution was requested in 87 per cent of labour trafficking cases; it was granted in 93 per cent of these cases.[31] What is of further concern is that child sex trafficking victims are least likely to see their restitution rights vindicated in federal courts or to pursue civil damages claims against their traffickers.[32]

---

[29] Office of the High Commissioner for Human Rights, Recommended Principles and Guidelines on Human Rights and Human Trafficking.

[30] Trafficking Victims Protection Act of 2000, United States Code, Title 18, sections 1593 and 2259; Justice for Victims of Trafficking Act of 2015.

[31] Alexandra F. Levy and Martina E. Vandenberg, "When 'mandatory' does not mean mandatory: failure to obtain criminal restitution in federal prosecution of human trafficking in the United States" (Human Trafficking Pro Bono Legal Center and Wilmer Hale, 2014).

[32] Alexandra F. Levy and Martina E. Vandenberg, "Breaking the law: the failure to award mandatory criminal restitution to victims in sex trafficking cases", *Saint Louis University Law Journal*, Vol. 60 (2015).

65. Permanent or temporary residence may, in itself, be a necessary and appropriate form of remedy. In this regard, the Special Rapporteur acknowledges the three forms of immigration relief available to victims of trafficking. The first of these is the T non-immigrant status (T visa), which provides immigration protection to victims of severe forms of trafficking who would suffer extreme hardship involving unusual and severe harm upon removal, persons who reasonably assist law enforcement in the investigation and prosecution of human trafficking cases or persons who are unable to cooperate due to physical or psychological trauma or who are under 18 years old. The T visa is obtained by submitting an application and a law enforcement service endorsement of the applicant's status as a victim of trafficking; the latter may be replaced by the applicant's statement. The benefits of this form of visa include employment authorization, the possibility of applying for the status of a lawful permanent resident and the opportunity for certain family members to obtain non-immigrant status in the form of derivative T visas. Of the maximum 5,000 T visas allocated annually (not counting the derivative T visas for the reunification of family members of victims), **848** visas were awarded in 2013, 613 were awarded in 2014 and 610 were awarded in 2015.[39] The U non-immigrant status (U visa), which requires certification by the law enforcement services, is available for victims of qualifying criminal offences, including human trafficking and fraud in migrant labour contracting. It allows the victims to remain in the country for up to four years; this period may be extended under certain circumstances so that victims can assist with the investigation or prosecution of human trafficking or qualifying crimes. Some 41 U visas were granted to trafficking victims in 2013, with 26 granted in 2014 and 29 granted in 2015.[40] Continued Presence is a temporary immigration status that allows trafficking victims to remain in the United States during the investigation of the crime committed against them. This renewable two-year status provides stability for non-citizen trafficking victims while alleviating the administrative burden on victims, service providers and the Government. Some 87 victims of trafficking were granted Continued Presence in 2013, some 72 in 2014 and 173 in 2015.[41] The Special Rapporteur commends these immigration relief measures but notes the low number of beneficiaries compared to the estimated number of trafficked persons.

66. Presently, post-conviction relief to ensure trafficking victims do not have a criminal record as a result of immigration or other offences is inadequate. Some states have vacatur or expungement laws that provide for a criminal conviction committed as a result of the status of trafficking victims to be expunged. According to civil society organizations, gaps include the provision of relief only to minors, the limited types of offences — often relating to prostitution — that may be expunged and burdensome requirements for proof of trafficking. Moreover, some of these laws fall short of providing full remedies to trafficked persons, for instance by sealing criminal records rather than vacating convictions. As a result, victims may find it difficult to find employment, housing, bank loans or education due to the discrimination and stigma that accompany criminal convictions. Given recent legal developments that call for prioritizing the removal of migrants who have been convicted of "any" criminal offence, there is a need to expunge status-related crimes committed by trafficked persons to prevent re-trafficking following repatriation.

67. Finally, the capacity of practitioners to correctly identify cases of trafficking, particularly those related to labour exploitation, also affects the type of redress awarded to victims. Survivors of trafficking noted that delays in the processing of their immigration applications affected their access to federal benefits. They also described how a lack of access to employment while waiting for redress affected their morale, hopes for a prompt recovery and social inclusion.

[39] United States Government Accountability Office, "Report to congressional committees, 2016", pp. 55–57.

[40] Ibid.

[41] Ibid.

H. Repatriation and reintegration

68. The reintegration of stateless victims of trafficking is one of the activities of the Interagency Task Force to Monitor and Combat Trafficking.[36] The safe repatriation and reintegration of unaccompanied migrant children to their country of origin or of last residence, including placement with their families, legal guardians or other sponsoring agencies, is also envisaged under the 2008 revision of the Victims of Trafficking and Violence Protection Act (section 235 (5) (a)).

69. Although legal assistance is often requested to enable trafficking survivors to bring to the United States eligible family members who have been granted derivative visas, it is not always available due to limited resources. The Return, Reintegration and Family Reunification Program for Victims of Trafficking, operated by the International Organization for Migration (IOM) and funded by the Department of State, provides trafficking victims with financial and logistical support, including pre-departure assistance, help with travel arrangements and documentation, airport assistance and special escorts for unaccompanied children. Since the programme was launched in 2005, some 1,900 eligible family members have legally joined over 800 trafficking survivors in the United States.[37]

70. Under the same programme, 30 survivors have been returned home voluntarily and benefited from reintegration assistance provided by IOM and NGOs to prevent the likelihood of re-trafficking in the country of origin.[38] Further assistance in the form of programmes and initiatives in foreign countries to support the safe integration, reintegration or resettlement of victims is provided by the Department of State and the United States Agency for International Development, in consultation with relevant non-governmental organizations.[39]

I. Prevention

1. Public awareness

71. Extensive awareness-raising measures, often developed in cooperation with trafficking survivors, are implemented by authorities at the federal, state and local levels, as well as by civil society organizations and businesses to prevent human trafficking. These include the nationwide Blue Campaign for front-line responders implemented by the Department of Homeland Security; the Department of Justice's guidance to immigration judges with respect, notably, to immigration court cases involving unaccompanied migrant children; the Department of Health and Human Services' ongoing awareness-raising campaigns and training for health professionals; the Department of Education's efforts to integrate trafficking information into school curricula; the initiative of the Department of Agriculture and the Department of Health and Human Services' to raise awareness of trafficking in the food and agricultural industries in rural communities; the training provided by the Department of Defense to all personnel, including to troops prior to their deployment; and the training offered by the Department of Transportation and the Department of Homeland Security to airline personnel through its Blue Lightning Initiative.

72. Furthermore, the fact that the booklet entitled "Know your rights: an information pamphlet describing your rights while working in the United States", which is provided at United States embassies to temporary workers in order to identify trafficking victims, has been praised by trafficking survivors should encourage the authorities to continue to translate it into numerous languages and share it with every person entering the country, regardless of the type of visa held. The Department of Labor uses tools such as the List of Products Produced by Forced or Indentured Child Labor, the Findings on the Worst Forms of Child Labor and the digital tools Sweat & Toil: Child Labor, Forced Labor and Human Trafficking Around the World and Reducing Child Labor and Forced Labor: A Toolkit for

[36] Victims of Trafficking and Violence Protection Act (2000), section 105 (d) (4).
[37] See www.iom.int/news/january-us-human-trafficking-awareness-month.
[38] Ibid.
[39] Victims of Trafficking and Violence Protection Act of 2000, section 107 (a) (1).

Responsible Businesses, to raise awareness about, and promote efforts to combat, trafficking in persons around the world. It also manages grant projects on combating trafficking in many countries. The Supply Unchained initiative of the United States Agency for International Development seeks to address the risk of human trafficking in global supply chains and business operations.

73. While the Special Rapporteur acknowledges these efforts, she notes gaps in the knowledge and awareness of the Government and civil society organizations with regard to all forms of trafficking, particularly trafficking for the purpose of labour exploitation. She also underscores the importance of a prevention strategy that addresses the root causes of, and demand for, trafficking which, in the context of the United States, includes demand for exploitative labour and sex. Moreover, despite the commendable efforts by individual agencies to collect data on human trafficking, including through the human trafficking reporting system of the Bureau of Justice, the Uniform Crime Reporting Program of the Federal Bureau of Investigation and the prosecution databases managed by the United States attorneys' offices and the prosecution units of the Department of Justice, the lack of comprehensive and centralized statistics with common indicators and disaggregated information makes it a challenge to obtain an overview of the prevalence of trafficking in persons and consequently to adopt counter-trafficking initiatives, including targeted preventive action.

2. Safe migration

74. Current immigration practices focus on criminalizing, returning or banning certain nationals from entering the country rather than on protecting irregular migrants — both adults and children — including potential victims of trafficking (see section B). In this regard, the Special Rapporteur wishes to reiterate that more opportunities for safe migration, namely legal, gainful and non-exploitative migration, are needed if the United States is to effectively address the demand for cheap and exploitable labour and fulfil its obligations to respect, protect and promote the rights of all workers, including migrants, and prevent trafficking in persons.

3. Cooperation with the private sector

75. Globally, the prevention of trafficking through public-private partnerships is gaining ground. Through self-regulatory mechanisms, such as codes of conduct or adherence to multi-stakeholder initiatives, as well as industry coalition efforts that address sustainability concerns including the elimination of trafficking in persons from business operations and supply chains, businesses have taken steps to, inter alia, remove labour trafficking from their supply chains.

76. The Special Rapporteur was pleased to learn about the Government's zero-tolerance policy on trafficking in persons for labour exploitation in federal contracts. In this regard, she notes that suppliers do not always seem to be aware of their responsibilities. She advises that labour attachés in United States embassies need to play a role in ensuring that the Federal Acquisition Regulation and other pertinent anti-trafficking laws are implemented in practice.

77. She welcomes the California Transparency in Supply Chains Act, which requires companies to report on their actions to eradicate slavery and human trafficking from their supply chains; the first national action plan, launched in 2016, to promote and incentivize responsible business conduct to further tackle labour exploitation; and the Counter-Trafficking Code of Conduct of the United States Agency for International Development, which is implemented through its Counter-Trafficking in Persons Standard Operating Procedure to address trafficking risks among its employees, grantees or contractors.

78. The Special Rapporteur was encouraged by the anti-trafficking initiatives implemented by the electronics companies that she contacted. All ethical businesses in the United States should aspire to prevent trafficking for the purposes of labour or other forms of exploitation in the business sector at the national, international and multinational levels. During her meeting with representatives of the business sector, the Special Rapporteur was apprised of various multi-stakeholder initiatives to identify victims of labour trafficking,

including a code of conduct that addresses forced labour in supply chains established by the Electronic Industry Citizenship Coalition, in cooperation with Vérité, an NGO. She salutes this praiseworthy initiative and encourages the federal authorities to support the efforts of the private sector, including by strengthening social auditing and enhancing workers' voices through adequate grievance and feedback mechanisms to monitor businesses' compliance with standards relating to trafficking in persons (A/HRC/35/37).

J. Cooperation and partnerships

1. National cooperation

79. In its Federal Strategic Action Plan on Services for Victims of Human Trafficking (2013-2017) the Government aspires, inter alia, to foster collaborations and partnerships to enhance the community response to human trafficking by developing networks to expand access to services. The President's Interagency Task Force to Monitor and Combat Trafficking in Persons and the Senior Policy Operating Group coordinate efforts at the federal level. Other examples of inter-agency cooperation at the federal, state and local levels include the Anti-Trafficking Coordination Team (ACTeam), the Mayor's Human Trafficking Task Force in San Francisco and the first Native American and Native Alaskan human trafficking task forces. However, coordination among federal, state and local agencies is often uneasy and, at times, hinders effective anti-trafficking action.

80. It is also important to integrate anti-trafficking actions into broader strategies related to the protection of indigenous people's rights, poverty eradication and access to justice for all. In this regard, the collaborative efforts of the Department of the Interior and the North Dakota tribal authorities to address violence against women and children, including through the adoption of the 2016 North Dakota Century Code, are noteworthy. The Special Rapporteur further encourages the Department of the Interior to continue its prevention and outreach work by identifying and addressing factors that make Native Americans and Native Alaskans vulnerable to trafficking in persons.

81. The contribution of, and collaboration with, civil society organizations and service providers is impressive and crucial to the fight against human trafficking. In this regard, civil society's efforts to tackle labour trafficking, such as the Fair Food Program of the Coalition of Immokalee Workers that empowers farmworkers in Florida, are commendable. The Special Rapporteur reiterates the need for sustained government support and funding to enable service providers to continue to combat trafficking in collaboration with the Government.

2. International, regional and bilateral cooperation

82. The United States has signed several bilateral memorandums of understanding on combating transnational organized crime, including trafficking, with Australia, Canada, Cuba, Mexico, as well as Taiwan Province of China, Europol and INTERPOL. It also benefits from cooperation with the United Nations and other international and regional organizations in areas such as training, assistance to victims of trafficking and repatriation.

83. At the international level, the leadership of the United States in convening anti-trafficking events is evident. For example, during the country's presidency of the Security Council, the first Council meeting on human trafficking in situations of conflict was held in December 2015. The Office to Monitor and Combat Trafficking in Persons of the Department of State, which undertakes unilateral annual assessments of the trafficking situation in States throughout the world, is also a useful tool to promote and share good practices among States. Moreover, the Department of Labor's reporting activities, including its List of Goods Produced by Child Labor or Forced Labor, and foreign aid restrictions designed to influence countries that wilfully fail to comply with anti-trafficking standards are additional tools used by the Government to counter trafficking at the global level.

III. Conclusions and recommendations

A. Conclusions

84. The Special Rapporteur commends the strong and long-standing commitment of the United States to fighting trafficking in persons, as reflected in the adoption of the Trafficking of Victims and Violence Protection Act of 2000, which has been revised four times to address emerging forms of trafficking in persons and to strengthen victim protection, and the multidisciplinary approach to anti-trafficking measures, which involves remarkable efforts by government agencies, civil society organizations, businesses and trafficking survivors. Efforts to raise awareness, as a means of preventing trafficking, are also yielding results. She encourages the United States to continue to further strengthen its anti-trafficking efforts at the federal, state and local levels and to continue to champion anti-trafficking action worldwide.

85. Issues that need to be further addressed in the country include the demand for cheap and unregulated labour, restrictive migration policies and capacity gaps that hinder the accurate identification of, and provision of assistance to, victims of trafficking, especially trafficking for the purpose of labour exploitation. While efforts are made to address all forms of trafficking, at the operational level the identification of trafficking cases remains largely focused on trafficking for the purpose of sexual exploitation, while results in the field of trafficking for the purpose of labour exploitation and other forms of trafficking remain limited. The current approach to migration policies and management, including the detention of irregular migrants, the temporary placement, detention and return of unaccompanied migrant children and the issue of temporary non-immigrant visas tying migrants to single employers create vulnerability to human trafficking, including re-trafficking. The absence of *vacatur* and "safe harbour" laws in some states, as well as the criminalization of prostitution, also contribute to creating vulnerability to human trafficking. Economic inequalities and social exclusion, discrimination and insufficient labour protections contribute to a favourable environment for traffickers in the country.

86. Despite federal funding and the commendable contribution of civil society organizations to providing assistance and protection to victims of trafficking, serious concerns remain regarding insufficient funding, services and facilities for trafficking survivors, especially children and men.

87. Other remaining challenges are related to coordination among federal, state and local level authorities to counter trafficking. Moreover, the dearth of data on trafficking inhibits the understanding of the extent and prevalence of trafficking in the country.

B. Recommendations

88. On the basis of the above findings, and in the spirit of cooperation and dialogue, the Special Rapporteur offers the following recommendations to the State, in order to build on the efforts of the previous administration and the traditionally bipartisan counter-trafficking approach developed in the United States Congress, to address remaining gaps:

(a) Ratify without delay the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

(b) Ratify, without delay, the Forced Labour Convention, 1930 (No. 29) of the International Labour Organization, the Protocol of 2014 thereto and the Domestic Workers Convention, 2011 (No. 189);

(c) Ratify, without delay, the Convention relating to the Status of Refugees and the Protocol thereto;

(d) Strengthen cooperation with international human rights mechanisms in the field of trafficking in persons, including the Special Rapporteur on trafficking in persons, especially women and children;

(e) Continue to cooperate and coordinate with bilateral, international and regional law enforcement agencies and victim services partners;

(f) Support international efforts to increase the accountability of the business sector in the field of human rights.

89. With respect to the national framework, she recommends that the Government:

(a) Harmonize and strengthen robust laws protecting workers to enjoy fair terms of employment, including by increasing the minimum wage, strengthening paid and sick leave, ensuring access to affordable medical care, facilitating the formation of unions in all sectors, prohibiting child labour, providing adequate recourse against illegal behaviour and effective oversight of labour conditions in temporary visa programmes and eliminating fees;

(b) Ensure that all anti-trafficking initiatives and actions are human rights-based and victim-centred and that they focus on the best interests of the child and encompass survivors' inputs, and include trafficking for the purpose of the removal of organs in anti-trafficking regulations, programmes and activities;

(c) Ensure that migrant workers with temporary non-immigrant visas are free to leave, change their employment or return to their country of origin;

(d) Ensure access to justice for indigenous women and men who are victims of human trafficking, including by ensuring that traditional justice models are adequately supported and empowered.

90. With regard to the identification of victims, training and capacity-building, she recommends that the Government:

(a) Harmonize identification protocols to detect all forms of trafficking in persons and develop red flags and indicators to be used when screening vulnerable persons, including undocumented migrants and victims of labour trafficking;

(b) Monitor visa requests from employers to ensure they do not misclassify visa programmes to avoid providing workers with minimum labour protections;

(c) Ensure that victims of trafficking, particularly unaccompanied migrant children, can be accurately identified, prevent their repatriation and re-victimization, and ban detention of children on immigration grounds;

(d) Continue providing comprehensive training on trafficking in persons to enhance knowledge and awareness of human trafficking of all stakeholders, including law enforcement, border and immigration officials, child welfare agencies, federal victim assistance staff, labour law enforcement agencies, judges, prosecutors and lawyers.

91. With respect to support services for victims of trafficking:

(a) Unconditionally protect and support all victims of trafficking, including child victims, lesbian, gay, bisexual, transgender and intersex persons and Native Americans, with full respect for their human rights, and address all forms of trafficking, including labour and domestic servitude;

(b) Provide individualized services, including long- and short-term housing, to all trafficked persons, including children and men and ensure that victims have access to employment while awaiting decisions on immigration relief;

(c) **Prevent undue delays in the processing of immigration relief for migrant victims of trafficking, facilitate access to legal representation and consider increasing the number of grantees entitled to available immigration relief;**

(d) **Provide adequate and regular funding to service providers and organizations working to combat trafficking in persons, in order to provide comprehensive assistance to victims of trafficking;**

(e) **Maintain close cooperation with international and regional organizations, particularly IOM and the Office of the United Nations High Commissioner for Refugees, as well as diplomatic missions, to ensure the safe return of trafficked victims to their country of origin, having due regard to the need, should it arise, for international protection for the victims and the application of the principle of non-refoulement;**

(f) **Increase coordination between government bodies at the federal and state levels, as well as with civil society organizations, to avoid redundancy and overlap of anti-trafficking efforts;**

(g) **Use existing resources and innovative ways to identify victims, such as the Federal Department of Agriculture's presence in all states and the posting of labour attachés in United States embassies to ensure the implementation of anti-trafficking laws, such as the Federal Acquisition Regulation.**

92. **With respect to prosecution, the Special Rapporteur recommends that the Government:**

(a) **Encourage State and local authorities to extend access by all trafficked persons, not only those charged with sex work, to the human trafficking intervention courts on the basis of complaints;**

(b) **Ensure the systematic implementation of the non–punishment principle so that trafficked persons are not prosecuted for offences directly related to their situation as trafficked persons;**

(c) **Decriminalize the selling of commercial sexual services and, at the very least, use police and prosecutorial discretion not to arrest, prosecute and detain persons involved in prostitution or sex work, including in order to encourage them to report trafficking and exploitation;**

(d) **Encourage the relevant state authorities to raise the minimum age of criminal responsibility to 18, ensure that children under that age are immune from prosecution for prostitution or sex work and other non-commercial and non-violent offences committed as a result of being subjected to trafficking and extend this immunity to cover all forms of trafficking of children;**

(e) **Adopt federal legislation and encourage state authorities to adopt or amend existing state legislation to allow trafficked persons to have all convictions vacated that result from being subjected to trafficking and to avoid the criminalization of migrant trafficked persons under the Executive Order on border security and immigration enforcement improvements of 2017;**

(f) **Enhance the investigation and prosecution of cases involving labour trafficking, including in the hospitality, agricultural and construction industries and, with respect to domestic workers, also seek the waiver of diplomatic immunity, where relevant;**

(g) **Provide effective remedies to trafficked persons and ensure that, as required by the Victims of Trafficking and Violence Protection Act and other statutes, mandatory restitution is requested by prosecutors and enforced by judges for all trafficking victims, particularly child victims of sex trafficking;**

(h) **Increase collaboration with governmental and non-governmental partners, including financial institutions, to enhance financial investigations and enforcement actions, including asset seizures.**

93. **With respect to prevention, the Special Rapporteur recommends that the Government:**

(a) **Continue to improve efforts to raise awareness about all forms of trafficking in persons, including for the purpose of forced labour, sexual exploitation and domestic servitude, in order to promote understanding of what constitutes trafficking among the general population, the migrant community, employers and employment agencies;**

(b) **Prioritize efforts to design strategies aimed at addressing the root causes of trafficking, including poverty and economic inequality, discrimination on the basis of gender and against other minorities, inadequate labour protections and restrictive immigration policies;**

(c) **Continue efforts to determine the prevalence of trafficking by developing and implementing a comprehensive and systematic data collection system on human trafficking at the federal, state and local levels, such as the system envisaged under the Coordinated Assistance To Catch Human Traffickers Act of 2015;**

(d) **Further strengthen coordination between government officials and the private sector, particularly in the tourism industry, on the Internet and in the field of telecommunications; encourage service providers, banks, trade unions and the media to identify cases of trafficking in persons, disseminate information and share best practices; and ensure redress for trafficked persons;**

(e) **Support the efforts of businesses to prevent and combat trafficking, especially in supply chains, by raising companies' awareness, providing incentives for them to adopt and implement self-regulatory mechanisms and by adopting and strengthening existing state legislation, such as the California Transparency in Supply Chains Act.**